

<sup>2</sup> Because the latest merit decision was issued on December 28, 2010 more than 180 days prior to the filing of the instant appeal, the Board does not have jurisdiction over the merits of appellant's September 27, 2010 recurrence claim. 20 C.F.R. § 501.3(e)(g) (2011). Moreover, the Board, within its discretion, denies his request for oral argument pursuant to 20 C.F.R. § 501.5(a). Appellant's request addressed the merits of his claim which are not before the Board on this appeal.

## **FACTUAL HISTORY**

Appellant, a 59-year-old former warehouseman/environmental specialist, injured his back in the performance of duty on March 27, 1991. OWCP accepted his claim for lumbar strain and authorized a July 26, 1991 left hemilaminotomy and discectomy at L5-S1. Appellant received wage-loss compensation. He returned to work in a limited-duty capacity on October 21, 1991. Appellant resigned from his position effective August 12, 1999. He worked for Wal-Mart from November 1998 until June 2000.

On September 27, 2010 appellant filed a notice of recurrence (Form CA-2a) for medical treatment only. He identified July 14, 2009 as the date of recurrence. Appellant indicated that he was bending over and felt a sharp pain in his lower back and numbness in his lower extremities the same as what he experienced at the time of his original injury. He also noted that since returning to work following his original injury he developed bilateral plantar fasciitis. The Form CA-2a was accompanied by employee health records dated July 21 and August 17, 1994, and a November 8, 2007 orthopedic surgery consult for reported left knee pain. In a September 6, 2000 report, Dr. John W. Barbaree, a chiropractor, diagnosed cervical sprain/strain, lumbosacral sprain/strain, bilateral knee compensation strain and bilateral plantar fasciitis. Appellant also submitted an August 5, 2010 report from another chiropractor, Dr. Michael D. Courtney, who diagnosed subluxation at L1-5, lumbar degenerative disc disease at L1-2 through L5-S1, low back pain, bilateral sciatic neuritis, radiculitis, muscle spasms and myalgia. OWCP also received a September 13, 2010 lumbar magnetic resonance imaging (MRI) scan and report from Dr. Scott M. Schlesinger, a Board-certified neurosurgeon, who examined appellant and reviewed the recent lumbar MRI scan. Dr. Schlesinger noted that appellant's chief complaint was back pain, but he also reported numbness in his feet and pain in the bottom of the feet, with a history of plantar fasciitis. He also noted that the MRI scan revealed degenerative changes and postoperative changes, but no evidence of neural compression. Dr. Schlesinger recommended a series of lumbar epidural steroid injections to address appellant's back pain. He also recommended that appellant follow-up with the Department of Veterans Affairs regarding his neuropathy symptoms.

By decision dated December 28, 2010, OWCP denied the recurrence claim on the basis that appellant had not established a causal relationship between his current lumbar condition and his March 27, 1991 employment injury.

On October 2, 2011 appellant requested reconsideration and submitted a September 26, 2011 statement.<sup>3</sup> He had an off-duty motor vehicle accident on December 21, 1996. Appellant explained that he had been helping someone who had just started a route with the U.S. Postal Service, but he personally was not employed by the postal service. He noted that postal service regulations permitted only one person in a truck. Appellant also indicated that he left Wal-Mart in 2000 because of heel pain due to plantar fasciitis and because of back pain. He contended that both conditions should be covered under workers' compensation.

---

<sup>3</sup> The statement appears to be in response to a November 22, 2010 recurrence claim development letter from OWCP.

In a decision dated October 24, 2011, OWCP denied appellant's request for reconsideration.

### **LEGAL PRECEDENT**

OWCP has the discretion to reopen a case for review on the merits.<sup>4</sup> An application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup> When an application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

### **ANALYSIS**

Appellant's October 2, 2011 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. He submitted the appeal request form that accompanied OWCP's December 28, 2010 merit decision. Additionally, appellant did not advance a relevant legal argument not previously considered by OWCP. Therefore, he is not entitled to a review of the merits based on the first and second above-noted requirements under section 10.606(b)(2).<sup>7</sup>

Appellant also failed to submit relevant and pertinent new evidence with his October 2, 2011 request for reconsideration. In a September 26, 2011 statement, he contended that his ongoing back problem and bilateral foot condition were employment related. OWCP previously denied appellant's recurrence claim finding the record did not demonstrate a causal relationship between his current condition and the March 27, 1991 employment injury. Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> As such, appellant's personal belief that his plantar fasciitis and current back complaints are employment related will not suffice. He did not provide any new medical evidence and was not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).<sup>9</sup>

---

<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> *Id.* at § 10.608(b).

<sup>7</sup> *Id.* at § 10.606(b)(2)(1) and (2).

<sup>8</sup> *See Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> 20 C.F.R. § 10.606(b)(2)(3).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's October 2, 2011 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board